

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO.12289 OF 2022

GIRIVIHAR CO OPERATIVE HOUSING SOCIETY LTD THROUGH ITS
PRESIDENT AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS DEPARTMENT OF
REVENUE AND FOREST AND OTHERS

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Advocate for Petitioners : Mr Subodh P. Shah

AGP for Respondent/State : Mr S.S. Dande

CORAM : SANDEEP V. MARNE, J.

DATE : 8th DECEMBER, 2022

PER COURT :

1. By this petition, petitioner challenges order dated 2nd February, 2022 passed by Jt. Civil Judge Senior Division, Nandurbar rejecting petitioners application for appointment of Court Commissioner for measurement of land and for fixation of boundaries.

2. Admittedly, the trial is yet to commence. In fact, the application for temporary injunction filed by the plaintiff/petitioner is also yet to be decided. Instead of pressing that application, plaintiff/petitioner filed application for appointment of Court Commissioner for measurement of land.

3. Though provisions of Section 75 and Order XXVI Rule 9 of the Code of Civil Procedure do not prescribe any particular stage when Court can appoint Court Commissioner. Considering the peculiar facts and circumstances of the present case, it appears that the only objective behind appointing the Court Commissioner in this particular case is to collect evidence.

4. In that view of the matter, the writ petition is dismissed.

5. Petitioners will however, have the liberty to file application for appointment of Court commissioner after elucidating their case by adducing evidence and in the event of such application is made, the trial court shall consider the same on its own merits without being influenced either by its order dated 02.02.2022 or by the present one.

[SANDEEP V. MARNE, J.]

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